STATE OF MICHIGAN

COURT OF APPEALS

KENNETH KARACZEWSKI,

Plaintiff-Appellee,

V

FARBMAN STEIN & COMPANY, and NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendants-Appellants.

UNPUBLISHED
October 18, 2005

No. 256172
WCAC
LC No. 02-000480

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendants appeal by leave granted the Worker's Compensation Appellate Commission ("WCAC") order affirming a magistrate's decision that the worker's compensation bureau has jurisdiction over plaintiff's petition for benefits.

The necessary facts were stipulated below, and set forth in the WCAC's opinion as follows:

> Plaintiff was hired by defendant on October 4, 1984 to work in Michigan as a maintenance engineer. As of the date of hire, plaintiff was a resident of Detroit, Michigan and defendant employer was a resident employer in Michigan. The Contract of hire was made in Michigan. The Farbman Group continues to be a resident employer and is currently located at 28400 Northwestern Hwy, Southfield, Michigan.
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> Plaintiff worked for defendant in Michigan from the date of hire until September 1, 1986, when defendant transferred him to Fort Lauderdale, Florida to assume the position of building superintendent. On January 12, 1995, Plaintiff fell from a ladder in the course of his employment for defendant in Florida, breaking his left wrist and injuring his left knee. At the time of the injury, he was a resident of Florida. On September 27, 1996, plaintiff reinjured his knee while still working for defendant in Florida. He underwent surgery on November 6, 1996 for ACL [anterior cruciate ligament] reconstruction and microfracture arthroplasty. Plaintiff returned to work for defendant with restrictions on December 2, 1996.

> He received certain benefits pursuant to Florida's worker's compensation law.
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> Plaintiff continued to work for defendant until September 15, 1997. Since that time, he has worked as a project manager for Rotella, Toroyan, Clinton Group, a Florida Corporation.
>
> Plaintiff continues to have problems with his left knee. There is no wage loss at this time. He has, however, incurred further expenses for treatment and anticipates the need for additional surgery(ies) in the future closed period(s) of disability. These claims are not covered under Florida law.
>
> Plaintiff has filed an application for mediation or hearing, claiming medical and wage loss benefits under Michigan law. Defendant disputes jurisdiction. It does not dispute the existence of a work related knee injury. [*Karaczewski v Farbman Stein & Company*, 2004 ACO 133, p 1-2.]

In the proceedings below, defendants contended that pursuant to the plain language of the statute which determines the bureau's jurisdiction, MCL 418.845,[1] to be entitled to benefits, an injured worker must be a resident of Michigan at the time of the injury. In response, plaintiff contended that pursuant to the interpretation of MCL 418.845, as set forth in *Boyd v W G Wade Shows*, 443 Mich 515; 505 NW2d 544 (1993), there is no residency requirement for an injured worker, and the bureau has jurisdiction over a petition filed by an injured worker when, as in the instant case, the contract of hire was executed in Michigan and the employer is a resident employer in Michigan. The magistrate agreed with plaintiff and concluded that the bureau had jurisdiction in this matter.[2]

Defendant appealed the decision to the WCAC. The WCAC noted that the Supreme Court's decision in *Boyd* reaffirmed an interpretation of the jurisdictional statute originally set forth in *Roberts v IXL Glass Corp*, 259 Mich 644; 244 NW 188 (1932). The WCAC opined that *Roberts* contravened the express language of MCL 418.845, but agreed with the magistrate that *Boyd* and *Roberts* are binding. Defendants were granted leave to appeal the WCAC's decision.

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while this Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701; 614 NW2d 607 (2000). Review by this Court begins with the WCAC's decision, not the magistrate's *Id.* If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its

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[1] MCL 418.845, provides: "[t]he bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act."

[2] The magistrate did not address whether plaintiff was entitled to benefits.

administrative appellate role in reviewing the magistrate's decision, then this Court should treat the WCAC's factual findings as conclusive. *Id*. at 709-710. This Court reviews questions of law in any WCAC order under a de novo standard. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id*. at 401-402.

In this appeal, defendants argue that, under the plain language of MCL 418.845, two requirements must be met in order to vest the bureau with jurisdiction: (1) the injured worker must be a resident of Michigan, and (2) the contract of hire must have been made in Michigan. Defendants argue that, in this case, because plaintiff was a resident of Florida at the time of the injury, regardless of the fact that the contract of hire was made in Michigan, the bureau lacks jurisdiction over plaintiff's petition.

In *Roberts, supra* at 646-647, our Supreme Court interpreted the similarly worded predecessor to MCL 418.845, which provided:

> The industrial accident board shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State, in those cases where the injured employee is a resident of this State at the time of the injury, and the contract of hire was made in this State, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act. [1929 CL 8458.]

The defendant in *Roberts* argued that the statutory residency requirement precluded the exercise of jurisdiction over the plaintiff's petition for benefits.[3] The Supreme Court stated that the defendant's argument, "would come with much, if not controlling, force if it were not in conflict with other portions of the statute." *Roberts, supra* at 647. According to the Supreme Court, a residency requirement would be inconsistent with various other parts of the worker's disability compensation act, and that, when the act, as a whole, is considered, jurisdiction is proper where the contract of hire was made in Michigan, regardless of the residency of the injured worker. The Supreme Court concluded:

> While it must be conceded that there is some conflict between the various quoted provisions of the act as amended, we are satisfied that the reasonable construction and the one necessary to carry out the legislative intent appearing from the whole act is that it covers nonresident as well as resident employees in those cases wherein the contract of employment is entered into in this State with a resident employer. [*Roberts, supra* at 648-649.]

In 1993, *Roberts* was revisited by the Supreme Court. In *Boyd, supra*, the plaintiff, an Illinois resident, had entered into an employment contract with the defendant in Michigan, and was subsequently injured on an Indiana work site. The plaintiff's claim for benefits was

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[3] In *Roberts*, the contract of hire was made in Michigan, but the plaintiff was never a resident of Michigan, and the injury occurred out of state. *Roberts, supra* at 644-645.

dismissed by the magistrate for lack of jurisdiction. Our Supreme Court reversed. The Supreme Court acknowledged that decisions from this Court had expressed disagreement with *Roberts* and had indicated that the decision was no longer controlling.[4] However, the Supreme Court stated:

> As the Court of Appeals repeatedly noted, it is the Supreme Court's obligation to overrule or modify case law if it becomes obsolete, and until this Court takes such action, the Court of Appeals and all lower courts are bound by that authority. While the Court of Appeals may properly express its belief that a decision of this Court was wrongly decided or is no longer viable, that conclusion does not excuse the Court of Appeals from applying the decision to the case before it. Because this Court has never overruled *Roberts*, it remains valid precedent. The rule of law regarding extraterritorial jurisdiction as expressed in *Roberts* should have been applied by the bureau in the present case. [*Boyd, supra* at 523. Citations omitted.]

The Supreme Court concluded that *Roberts* should not be overruled:

> If the allegedly "out-dated" *Roberts* decision is overruled by this Court, then a significant gap in coverage will exist in this state's compensation scheme. Specifically, all Michigan employees who suffer an out-of-state injury in the course of their employment and who reside in neighboring states will not be subject to the bureau's jurisdiction. We believe that such a jurisdictional scheme is not only undesirable by also unduly restrictive. . . . *Roberts* remains an effective means of retaining a fair and consistent scheme for extraterritorial jurisdiction. This Court has stated that a court will not overrule a decision deliberately made unless the Court is convinced not merely that the case was wrongly decided, but also that less injury would result from overruling than from following it. Clearly, because of the gap in coverage that would result, overruling *Roberts* would cause a far greater injury than allowing *Roberts* to stand. [*Boyd, supra* at 523-525. Citation and footnote omitted.]

The Supreme Court also noted the legislature had acquiesced to *Roberts* for over sixty years by revising the workers' disability compensation act several times and never taking any action to indicate its disapproval of *Roberts'* interpretation of the jurisdictional requirements. *Boyd, supra* at 525-526. The Supreme Court concluded:

> pursuant to § 845 of the workers' disability compensation act and *Roberts v IXL Glass Corp, supra*, the Bureau of Workers' Disability Compensation shall have jurisdiction over extraterritorial injuries without regard to the employee's residence, provided the contract of employment was entered into in this state with a resident employer. [*Boyd, supra* at 526.]

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[4] See e.g., *Hall v Chrysler Corp*, 172 Mich App 670; 432 NW2d 398 (1988); *Wolf v Ethyl Corp*, 124 Mich App 368; 335 NW2d 42 (1983).

In the instant case, the parties stipulated that the contract of hire was made in Michigan, and that defendant Farbman is a resident employer. Therefore, pursuant to *Roberts* and *Boyd*, the WCAC properly concluded that the bureau has jurisdiction over plaintiff's petition for benefits.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder